

# **Supplemental Environmental Project (SEP) Policy**

**Kansas Department of Health and Environment  
Division of Environment  
Bureau of Air and Radiation**

**July 14, 2005**

## **I. Introduction**

As part of an enforcement action settlement, an alleged violator of the Kansas Air Quality Statutes and Regulations may agree to participate in a Supplemental Environmental Project (SEP) to offset a portion of a civil penalty associated with the enforcement action. SEPs are an opportunity to improve the environment through projects that prevent, remediate, or reduce emissions of pollutants that adversely impact public health or the environment. SEPs, which Bureau of Air and Radiation (BAR) will propose to KDHE management for approval, will be related to air quality control and air pollution prevention or reduction. However, KDHE may consider SEPs that benefit other environmental media.

SEPs are environmentally beneficial projects that an alleged violator agrees to undertake as part of an enforcement action, but that the alleged violator is not otherwise legally required to perform. All SEPs must result in improvements to the environment or public health. The value of the SEP will equal or exceed the amount of penalty reduction offered in exchange. KDHE follows certain criteria concerning what constitutes an acceptable SEP, the value of SEPs, and penalty offset. This document describes these criteria, and how SEPs are carried out.

Each proposed enforcement action and/or SEP must be approved by the Director of BAR, the Director of the Division of Environment, and the Secretary of KDHE before it is final. During the process of negotiating and proposing enforcement actions and/or SEPs, agency management may revise the proposed action at any time. This policy is intended to serve only as guidance, with final decisions made by KDHE management during the process.

## **II. SEP Approval Process**

### **A. Enforcement Action**

Once enforcement by KDHE has begun, the alleged violator will have the opportunity to resolve the case through a settlement agreement with KDHE. The settlement will be in the form of a Consent Agreement and Final Order of the Secretary (CAO) for the resolution of the enforcement action, and will include an agreed civil penalty to be paid by the alleged violator. Alleged violators will be offered a copy of this SEP policy during settlement negotiations. Mutually agreeable SEPs may be a component of the CAO and offset a portion of the civil penalty.

### **B. Selection of Proposed Projects**

Possible SEPs may be proposed by the alleged violator or from a list provided by BAR. Ultimately, one or more acceptable SEPs are determined to be mutually acceptable to all participants, and implementing details related to the SEPs are developed and mutually agreed upon. BAR consideration of a proposal is based on the criteria described in Section III and offsetting penalties described in Section IV. After BAR review, the SEP must be approved by the BAR Director, the Director of the Division of Environment, and the Secretary of KDHE.

### **C. Approval Process**

The mutually agreeable SEPs are incorporated into the proposed CAO, drafted by BAR. Within this draft CAO, the amount of civil penalty offset and conditions of the

SEP are stated. The implementation requirements of the SEP will be set forth in the Schedule of Compliance section of the CAO. Progress reports and progress deadlines are usually included as requirements. The document will be sent to the BAR Director, the Director of the Division of Environment, and the Secretary of KDHE for approval, and they may propose revisions. If the alleged violator is agreeable to all components and requirements of the proposed CAO, a responsible official of the organization will sign the agreement and return it to BAR. Upon the final signature by the Secretary of KDHE, the CAO is executed.

#### **D. Implementation of Approved SEP**

With the execution of the CAO, the progress of the SEP will be monitored by BAR and KDHE until completion. Failure to complete the SEP, or to submit required progress reports or conditions contained therein will be a violation of the CAO, with potential for additional enforcement action, including civil penalties.

The agreement will contain provisions for emergency and unforeseen circumstances that cause a delay or failure in completion of the SEP or CAO, which may include Acts of God, fires, or explosions at a facility. The alleged violator is responsible for presenting acceptable cause and effect statements. The CAO also has provisions for Dispute Resolution between all parties. The CAO will be terminated when all requirements contained in the agreement have been met, completed or resolved, as determined by KDHE.

### **III. Criteria for an Acceptable SEP**

The following criteria are evaluated and serve as guidance by BAR when considering a SEP as a component to resolve enforcement actions:

#### **Requirements:**

- The SEP must be environmentally beneficial, to improve and protect the environment and reduce environmental risks to the public. The SEP must prevent emissions, remediate emissions or reduce emissions of air pollution that adversely impact public health or environment.
- The SEP is undertaken in conjunction with the settlement of an enforcement action. An environmental project which has already been completed, for which a commitment has been made, or has been budgeted for by the violator is not acceptable.
- The SEP must go beyond the minimum compliance with the law.
- SEPs must not adversely affect another environmental concern in the process of implementing the SEP.
- If not already a requirement of the CAO, the source must state that it has or will have an environmental management system (EMS) before a SEP will be considered. Guidance as what constitutes an EMS is found at EPA's Performance Track web site:

[http://www.epa.gov/performance/ind\\_assessment.htm](http://www.epa.gov/performance/ind_assessment.htm)

- For each SEP, a contribution shall be made to support a statewide environmental education program administered by the Kansas Association for Conservation and Environmental Education (KACEE). The funds contributed to KACEE will be split 50%/50% between KACEE general environmental education activities and a grant program managed by KACEE to fund air quality public education activities, unless specified otherwise in the agreement. The required contribution shall be as follows:

SEP Value	Minimum Environmental Education Contribution
\$4,000-\$9,999	\$300
\$10,000-\$29,999	\$750
\$30,000-\$99,999	\$2250
\$100,000 and above	Negotiable

**Other Criteria:**

- In addition to the SEP, settlements will generally contain a payable civil penalty to deter future violations.
- SEPs to fund public works and other projects for the local community or county that will benefit the local environment may be considered.
- Environmental restoration projects that exceed the requirements of environmental regulations to enhance the environment in the vicinity of the violator's facility may be acceptable.
- The review, oversight or monitoring of SEPs must be within the resources and capabilities of BAR, and must provide enough environmental benefit to justify oversight by BAR.
- Pollution prevention projects are acceptable, as well as projects which reduce pollutant emissions or otherwise improve the environment.

**IV. Offsetting Penalties and Determination of the Value of a Proposed SEP**

After BAR staff has reviewed a SEP proposal for the criteria listed in Section III, the penalty offset percentage will be determined. The penalty offset percentage is the percentage the penalty can be reduced by a SEP.

The guidelines for the allowable penalty offset percentages are listed below. The table lists the maximum offset percentages and minimum amounts for facilities.

Allowable Penalty Offset Percentages for SEPs		
	For-Profit	Not-For-Profit
Maximum (in percent of civil penalty amount)	Up to 85%	Up to 95%
Minimum (in total dollars)	\$4,000	\$2,000



*Example: If a for-profit facility has a \$20,000 penalty, the penalty may be reduced by as much as 85% (\$17,000) of the civil penalty. If a SEP is to be used, the penalty offset is a minimum of \$4,000. A proposed SEP valued at \$4,500 (85% of which is \$3825) would not meet the minimum penalty offset and would not be an acceptable project.*

The next step is to calculate the maximum amount the SEP can offset the civil penalty using the SEP Value Offset Ratio. The value of the SEP must equal or exceed the amount the penalty will be reduced. A SEP Value Offset Ratio of 1.25:1 means that the SEP value must be 1.25 times greater than the penalty amount that will be reduced. The SEP Value Offset Ratios for Not-for-Profit and For-Profit Facilities are listed in the table below.

SEP Value Offset Ratio		
Benefit to Environment/Public Health	For-Profit	Not-for-Profit
High	1.25:1	1:1
Moderate	2:1	1.5:1
Low	3:1	2.5:1

*Example: A for-profit facility has agreed to a SEP of moderate benefit to the environment. The SEP ratio is 2:1; therefore a SEP of \$20,000 would offset \$10,000 of the civil penalty.*

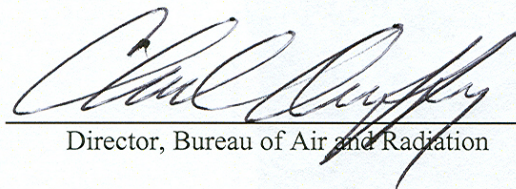
The contribution to KACEE is included as part of the SEP value for the purpose of calculating penalty offsets. New expenditures on EMS systems also may be included as part of the SEP value for the purpose of calculating penalty offsets.

## V. Contact Information

If you would like additional information, contact the Bureau of Air and Radiation:

Bureau of Air and Radiation  
Air Permits and Compliance Section  
1000 SW Jackson, Suite 310  
Curtis State Office Building  
Topeka, Kansas 66612-1366  
(785) 296-1544  
[www.kdhe.state.ks.us/bar](http://www.kdhe.state.ks.us/bar)

## VI. Approval of SEP Policy

  
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Director, Bureau of Air and Radiation

  
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Date